HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION No.16265 of 2007

Date: 09.08.2007

Between :

Rattan Lal Agarwal and others.

.....Petitioners

And

A.P. State Wakf Board and others.

.....Respondents.

HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION No.16265 of 2007

ORDER :

The petitioners claim to have purchased an extent of Ac.4.00 of land in Survey Nos.182 and 183 of Kucharam Village, Toopran Mandal, Medak District, through sale deeds, dated 07.02.2006, from the original owners. The Inspector Auditor (Wakf), Medak District at Sangareddy, second respondent herein issued a notice, dated 05.05.2007 to the petitioners. Reference is made to the sale deed, dated 07.02.2006 and it is observed that according to the Judgment of the Supreme Court, the sale or purchase of wakf property is illegal. The petitioners were required to submit their explanation about the alleged illegal transaction, within seven (7) days from the date of receipt of the notice. They were also threatened with eviction, through police, if the explanation is not submitted. The notice is challenged in this writ petition.

Learned counsel for the petitioners submits that the second respondent is not vested with any powers under

the Wakf Act (for short 'the Act') and that the notice is as vague as it could be. According to him, if the second respondent intends to assail the validity of the sale, he has to institute the proceedings under the relevant provisions of law; and the impugned notice is without any basis and jurisdiction.

Learned Standing Counsel for respondents 1 and 2, on the other hand, submits that the petitioners can put forward all their contentions in their explanation and the writ petition is not maintainable against the show cause notice.

The Act prescribes a detailed procedure for eviction of persons, who occupy the wakf properties unauthorisedly. Section 54 of the Act empowers the Chief Executive Officer to examine the matter and pass appropriate orders for removal of encroachments. Once such an order is passed, it can be forwarded to the Revenue Divisional Officer for implementation. The Inspector Auditor does not figure anywhere in the whole procedure prescribed under Sections 54 and 55 of the Act.

Had it been a case, where the notice was issued by a competent authority, this Court would certainly have

hesitated to entertain the writ petition. The reason is that the concerned parties have to put forward their explanation and pursue their remedies, thereafter. When, admittedly, the second respondent is not vested with the power to issue show cause notice, the petitioners cannot be required to submit their explanation or to undergo the ordeal of defending themselves before the authority, not vested with the power.

For the foregoing reasons, the writ petition is allowed and the impugned notice is set aside. It is, however, left open to the first respondent to take necessary steps, in accordance with the procedure prescribed by law. There shall be no order as to costs.

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09.08.2007

JSU